IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISIDICTION

WRIT PETITION NO.109 OF 2005

Smt.Dulhanbi Mohammedhanif
Mirshidari and Ors. ..Petitioners

Vs.

Jaywant Shankarrao Nale ..Respondent

....

Mr.Girish S.Godbole for Petitioners
Mr.Amit Borkar for Respondent

....

CORAM : B.H.MARLAPALLE,J.

DATE : MARCH 24,2005

P.C.:

1. Heard the learned counsel for the petitioners and respondents. Rule. By consent, rule is taken forthwith for final hearing.

2. R.C.S.No. 185 of 1998 came to be decreed on 19.12.1998 and the said decree had reached finality. For its execution R.D. No. 462 of 2002 was filed and the present petitioners are Judgment Debtors. In the said execution proceedings, an application at Exh.1 came to be filed by the decree holder/present respondent contending that the Judgment Debtors had disobeyed the order of perpetual injunction granted to him by the trial Court directing not to obstruct to the possession of the plaintiff over the suit shop

located in the property having City Survey No. 659/1 'B' Ward, Kolhapur. The evidence was recorded and after hearing the respective parties, the learned Jt.C.J.J.D. has allowed the said application by his order dated 24.12.2004. It was noticed that Judgment Debtor No.3 was acting on behalf of Judgment Debtors Nos. 1 and 2 and in the name of construction for the purpose of development of the suit premises, the wall of the suit shop was demolished and resultantly the shop did not remain in place. The trial Court noted that though the Judgment Debtor No.3 was responsible for this wilful disobedience of the order of perpetual injunction, it held guilty respondent Judgment Debtors nos.1 and 2 as well on the ground that they walked in the shoes of Judgment Debtor No.3.

3. Though the impugned order does not call for any interference so far as the Judgment Debtor No.3 is concerned, the Judgment Debtors nos.1 and 2 being the ladies/wives and they had not acted on their own. Instead, the Judgment Debtor no.3 claimed to be acting on their behalf. Under these circumstances, it would not be proper to hold the Judgment Debtors nos.1 and 2 responsible and therefore, to that extent the impugned order needs modifications.

4. The petition therefore, partly succeeds to the

extent of Judgment Debtors Nos.1 and 2. The impugned order is quashed and set aside so far as the Judgment Debtors Nos.1 and 2 are concerned and the said order is confirmed in respect of Judgment Debtor No.3.

5. At this stage, Mr.Godbole, the learned counsel for the petitioners came out with a proposal to purge from the wilful disobedience of the order of injunction by undertaking to reconstruct the subject wall within a period of four weeks. If that be so, the order against Judgment Debtor No.3 as confirmed, will not be acted upon for a period of four weeks from today. However, if the said wall is reconstructed within the stipulated period and he shows his bonafides, he will not be sent to civil prison and the construction of wall at his costs, would be sufficient punishment instead.

[B.H.MARLAPALLE,J.]